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6 TRANSCRIPT OF PROCEEDINGS
7 Oral Argument
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12 In the Matter of the Verified)
Petition of Sprint Communications)
13 Company, L.P., Sprint Spectrum,)
L.P. and Nextel West Corp. For) Case No. CO-2009-0239
14 Arbitration of Interconnection)
Agreements with Southwestern Bell)
15 Telephone Company d/b/a AT&T)
Missouri)

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NANCY M. DIPPELL, Presiding,
19 DEPUTY CHIEF REGULATORY LAW JUDGE.

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ROBERT M. CLAYTON III, Chairman,
TERRY JARRETT,
21 COMMISSIONERS.

22

23 REPORTED BY:

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1 P R O C E E D I N G S

2 JUDGE DIPPELL: This is Case No.
3 CO-2009-0239, the verified petition of Sprint
4 Communications Company, L.P., Sprint Spectrum, L.P. and
5 Nextel West Corp. for arbitration of interconnection
6 agreements with Southwestern Bell Telephone Company, doing
7 business as AT&T Missouri.

8 My name is Nancy Dippell. I'm the
9 Regulatory Law Judge and the Arbitrator on this case.
10 We've come here today for oral arguments regarding both
11 the Motion for Reconsideration that AT&T filed regarding
12 the Commission's Order denying their motion to dismiss and
13 also general oral arguments on the Arbitrator's final
14 report.

15 So I'm going to begin by getting entries of
16 appearance. Sprint?

17 MR. SCHIFMAN: Thank you, Judge. My name
18 is Ken Schifman on behalf of the Sprint companies
19 identified as Petitioners in this matter.

20 JUDGE DIPPELL: Is your mic on?

21 MR. SCHIFMAN: Ken Schifman on behalf of
22 the Sprint companies identified as Petitioners in this
23 matter.

24 JUDGE DIPPELL: I will just note that I
25 will be referring throughout this proceeding to Sprint,

1 and by that I mean all three companies unless I
2 specifically specify one of them.

3 MR. PFAFF: Thank you, your Honor. This is
4 Jeff Pfaff, also appearing on behalf of the Sprint
5 companies.

6 JUDGE DIPPELL: And AT&T?

7 MR. BUB: Thank you, your Honor. Leo Bub
8 for AT&T Missouri.

9 JUDGE DIPPELL: Thank you. Like I said,
10 we've come here today for oral arguments, and because this
11 is a little bit odd procedurally, I'm going to tell you
12 what I had in mind for the order of things, and that was I
13 thought that I would let each of you do your arguments and
14 have the Commissioners ask questions as they desire from
15 the Bench.

16 I thought we'd start with Sprint and then
17 have AT&T, and then I will give you all an opportunity to
18 make some closing remarks as well. And in that case,
19 since I kind of feel like it's AT&T arguing an appeal
20 here, I'm going to let them go last, if that's acceptable.
21 Mr. Schiffman, you look like you question that.

22 MR. SCHIFMAN: Okay. So you're saying --

23 JUDGE DIPPELL: I'll let them have the last
24 word.

25 MR. SCHIFMAN: Okay. Sprint first -- okay.

1 I understand how --

2 JUDGE DIPPELL: Is that fine?

3 MR. SCHIFMAN: That's fine.

4 JUDGE DIPPELL: Is everyone okay with that?

5 All right. Then let's go ahead and I will let Sprint
6 begin.

7 MR. SCHIFMAN: Thank you, Judge. Good
8 afternoon, Commissioners Clayton and Jarrett and those who
9 are watching via the web here. My name is Ken Schifman,
10 and I'm appearing here on behalf of Sprint. Mr. Pfaff and
11 I kind of split up this case, and he's going to do the
12 bulk of the oral argument. I just wanted to say hi and
13 introduce myself.

14 There may be places here where I feel I
15 can't contain myself and during the questions or something
16 I may come up and ask Mr. Pfaff if we can double team on
17 something, so if I could have your indulgence on that, I
18 would appreciate it.

19 But we appreciate all the time and
20 attention you've spent on this matter and how we were able
21 to get to this point in a quick and expeditious way, and
22 we're happy to be here and excited to demonstrate that the
23 Commission does have jurisdiction over this matter and
24 that this is a simple arbitration case, not unlike many
25 other arbitration cases that the Commission has handled.

1 So with that, I'll let Mr. Pfaff give the
2 bulk of our argument and then come back up if I need to.
3 Thank you very much.

4 JUDGE DIPPELL: Thank you.

5 MR. PFAFF: Commissioner Clayton,
6 Commissioner Jarrett, Judge Dippell. Ken said he would
7 actually volunteer and he would take all the tough
8 questions, so you guys just let us know when those are
9 coming up and we'll switch places in a hurry.

10 Again, I appreciate the opportunity to be
11 here today. I honestly have pages and pages of remarks,
12 but I'm actually going to try to keep them short because I
13 think this case is much simpler than it -- than it appears
14 to be or has been made.

15 As Mr. Schiffman said, we really think this
16 is simply an arbitration case. We filed for an
17 arbitration based upon the Commission's decision in our
18 earlier complaint proceeding where it basically -- where
19 jurisdiction was denied based on the fact that we weren't
20 bringing an arbitration case. So reading the tea leaves
21 as it were, we said, okay, I think what we need to do is
22 bring an arbitration case.

23 At issue in this proceeding are three
24 separate interconnection agreements that Sprint has with
25 AT&T in the state of Missouri. Sprint appropriately

1 requested negotiations under Section 251 and timely and
2 properly filed this Petition for Arbitration under
3 Section 252. The Commission has appropriately ruled that
4 it has jurisdiction to consider this arbitration, and the
5 Commission should now rule on the single issue presented
6 in the proceeding, the extension of Sprint's current
7 interconnection agreements for three years.

8 Judge Dippell has thoroughly and correctly
9 analyzed this matter. It has been extensively briefed,
10 and testimony has been presented. Her Conclusions of Law
11 starting on pages 37 through 39 make it clear that
12 Sections 251/252 negotiations occurred and that the three-
13 year extension was an issue raised during the appropriate
14 period.

15 The important facts are these: Sprint and
16 AT&T are operating under interconnection agreements filed
17 with and approved by the Missouri Commission. Sprint
18 filed its request for negotiations. AT&T acknowledged
19 that request. The parties negotiated in accordance with
20 the Act. During the negotiation period, Sprint notified
21 AT&T of its intent to extend its current interconnection
22 agreements for three years. Sprint filed its arbitration
23 petition on a single open issue, the extension of its
24 current agreements for three years.

25 None of the facts supporting these

1 conclusions are really in dispute. What is in dispute is
2 AT&T's contention that it can dictate the scope of the
3 interconnection negotiations. The major area of
4 contention is that AT&T is adamant that state commissions
5 cannot and should not enforce merger commitments.

6 But to be clear, the Missouri Commission
7 has already effectively enforced the merger commitments.
8 It has approved the Verizon Wireless/AT&T interconnection
9 agreements that was extended for three years under merger
10 commitment 7.4, the very merger commitment Sprint is
11 seeking here. Judge Dippell notes that the Commission
12 approved the Verizon Wireless agreement in Finding of Fact
13 104.

14 In fact, AT&T has extended the Missouri
15 interconnection agreements of at least 20 other carriers.
16 Presumably those have also been submitted to the
17 Commission for approval. This is according to their
18 response to Sprint's data request and attached to
19 Mr. Felton's testimony as MGF-3. Sprint properly
20 presented its request for three years as an arbitration
21 issue.

22 The Commission is well aware of the history
23 surrounding the merger conditions, but just to summarize,
24 I would just like to point out that during the year of
25 2006 when AT&T was attempting to get its BellSouth merger

1 approved, it seemed that time was running out, and finally
2 AT&T submitted the merger commitments to the FCC. Those
3 conditions were approved as part of the merger order and
4 became essentially federal law.

5 The merger commitment at issue here, 7.4 --
6 and excuse me. I'd like to pass something out if I could.
7 I'm sorry. We should have handed this out at the
8 beginning. I just made some copies of some exhibits and
9 some of the issues here that makes it easier to refer to.

10 Included is the, as you can see in the
11 materials we've handed out, is the merger commitments, the
12 cover page, and it's not the entire 20 pages of the merger
13 commitments, but the cover page of the merger commitments
14 at issue. So --

15 JUDGE DIPPELL: Mr. Schiffman, if you want
16 to give me the copies for the other Commissioners --

17 MR. SCHIFMAN: Sure.

18 JUDGE DIPPELL: -- I'll make sure they have
19 those. Thank you.

20 MR. PFAFF: And just to be clear, Exhibit 2
21 to the Petition actually is the entire merger commitment.
22 I didn't attach it in this little handout.

23 But the merger commitment at issue is 7.4.
24 The AT&T and BellSouth ILEC shall permit a requesting
25 telecommunications carrier to extend its current

1 interconnection agreement regardless of whether its
2 initial term is expired for a period of up to three years
3 subject to amendment to reflect prior and future changes
4 of law. During this period, the interconnection agreement
5 may be terminated only via the carrier's request unless
6 terminated pursuant to the agreement's default provisions.

7 This is a very straightforward and what we
8 believe an unambiguous condition or commitment. It's a
9 promise that AT&T made, and basically it was if a carrier
10 wants to extend his current agreement, the agreement that
11 it's operating under, AT&T will allow it to do so, and
12 that is what Sprint asked for.

13 As the Commission is aware, Sprint has been
14 attempting to utilize the merger commitment since the late
15 fall of 2007. In 2007 we filed a complaint with the
16 Missouri Commission. We were at that time attempting to
17 port in the Kentucky ICA under a different merger
18 condition, and the Commission ruled -- now, I think it was
19 a three to two vote -- that it did not have jurisdiction
20 over the merger conditions.

21 Chairman Clayton and Commissioner Gunn
22 filed dissents to that decision maintaining that Missouri
23 retained jurisdiction over interconnection agreements and
24 citing to the rationale offered by the Ohio and Kansas
25 Commissions in asserting jurisdiction.

1 When the Commission granted AT&T's motion
2 to dismiss in that proceeding, the rationale for that
3 decision was as follows: Sprint's complaint does not ask
4 the Commission to arbitrate open interconnection issues,
5 to approve an interconnection agreement, to reject an
6 interconnection agreement or to interpret or enforce an
7 interconnection agreement it has approved. That was the
8 rationale by the Commission.

9 While Sprint actually filed for
10 reconsideration of that decision, we took the Commission
11 at its word, and on June 30, 2008, we filed our request to
12 negotiate an agreement with AT&T under Sections 251/252.
13 That request is included in these materials in item No. 2.

14 On July 16, 2008, AT&T responded to Sprint
15 and acknowledged its request. The parties negotiated
16 through the rest of the summer and throughout the period.
17 As the parties continued to discuss the changes to the
18 Kentucky ICA, it became clear to Sprint that the parties
19 were still very far apart on some important issues,
20 including some areas where Sprint believed AT&T was simply
21 being unreasonable.

22 As the hearing testimony described, Sprint
23 believed that the definition of wireless local traffic in
24 the Kentucky ICA would need to be changed. Ms. Ellen
25 Flood noted that one area of disagreement was the

1 definition of wireless local traffic, and Mr. McPhee
2 admitted that the Missouri Commission had already ruled in
3 favor of Sprint's position on this issue.

4 This was essentially the Alma decision
5 where the Commission ruled that reciprocal compensation
6 does apply to wireless traffic carried by an IXC, a
7 decision that was ultimately upheld by the federal courts.

8 Now, the definition of local traffic wasn't
9 critical to the Kentucky ICA because it was a bill and
10 keep agreement -- bill and keep agreement, and the parties
11 weren't going to be exchanging money anyway, but it was
12 critical if bill and keep wasn't ported in.

13 So as Mr. Felton testified, it became clear
14 to Sprint that there was little chance of resolving these
15 intractable issues, and since the Kentucky agreement's
16 term expired on December 28, 2009, unless it was quickly
17 adopted, it would provide little benefit.

18 During the negotiation windows, several
19 conversations were held concerning Sprint's request to
20 extend the current agreements. Ms. Ellen Flood, the AT&T
21 witness, acknowledged that Sprint several times during the
22 arbitration window asked about extending its current
23 agreement. In those conversations AT&T informed Sprint
24 that the extensions of the agreements would not be
25 permitted.

1 The negotiations, no matter how brief, took
2 place. Sprint asked to extend, and AT&T said no. No
3 further discussions were necessary. Furthermore, as
4 Mr. McPhee testified at hearing, AT&T was not likely to
5 change its position on that issue.

6 So Sprint was forced into a conundrum. It
7 could either continue down the path it was on and
8 arbitrate a number of issues with AT&T, including some
9 issues that it believed it shouldn't have to arbitrate, or
10 to take what it believed to be a less controversial
11 approach and simply extend the current agreements that it
12 had in place.

13 In light of the limited time available
14 under the Kentucky agreement, it just didn't make sense
15 for Sprint to continue to try to arbitrate those issues.
16 As Judge Dippell noted in page 38 of her decision, upon
17 evaluation of the progress and time remaining on the
18 Kentucky agreement, it was reasonable for Sprint to
19 interject the extensions during the negotiations period.

20 On December 5th, AT&T provided Sprint a
21 written response to our request and repeated what it had
22 told Sprint during the negotiations. Its request was
23 denied because the request was received after the
24 arbitrary deadline set by AT&T for extension request for
25 ICAs.

1 Now, the accessible letter cited by AT&T is
2 in direct contradiction with a merger commitment that
3 allows carriers to extend their agreements for three
4 years, and one that does not include a specified deadline.
5 The purpose of the accessible letter was for AT&T to set a
6 deadline for carriers to submit their extension requests.
7 No such deadline exists in the merger order. As Judge
8 Dippell noted, AT&T cannot unilaterally alter the terms of
9 the merger order.

10 What is even more amazing now is that AT&T
11 concedes that Sprint's CLEC agreement could be extended
12 under the unassailable terms of the merger commitments
13 because that agreement's term did not expire until April
14 of 2008. Under any reading of the merger commitment, that
15 agreement should be extended for three years until April
16 of 2011.

17 Yet as Mr. McPhee testified at hearing,
18 AT&T is still unwilling to extend that agreement. In her
19 Finding of Fact No. 103, Judge Dippell noted that AT&T had
20 conceded that under the plain language of the merger
21 commitment, this agreement was eligible for extension.

22 Now, AT&T has filed a motion to dismiss on
23 jurisdictional grounds, and that's what we're here for
24 today on the reconsideration of that motion. In Sprint's
25 view, the testimony that came about through the hearing

1 basically establishes Sprint's right to submit this matter
2 to arbitration. The extension request was -- was
3 discussed during the appropriate period. The parties --
4 and again, although it was a brief discussion, it was --
5 it was negotiated, and Sprint asked. AT&T said no.

6 Sprint didn't believe there was anything
7 further it needed to do except to submit the matter for
8 arbitration. In fact, you'll note that in item No. 4,
9 when we notified them of our election to extend our
10 agreements for three years, our letter dated November 21,
11 2008, we made it clear that if AT&T was unwilling to agree
12 to Sprint's election to extend its existing ICA, we were
13 going to submit the extension request at the arbitration
14 proceeding.

15 Yesterday, as the Commission is aware,
16 Sprint submitted as supplemental authority the decision by
17 the Michigan arbitration panel on a nearly identical case.
18 On April 22nd three arbitrators unanimously found that the
19 Sprint arbitration petition to extend its current
20 agreements for three years against AT&T was properly
21 before the Michigan PSC and that it had jurisdiction.

22 The panel found that Sprint prevailed and
23 could extend its current agreements for three years from
24 January 15th, 2009.

25 Now, the issues in the Michigan case and

1 the case in Missouri are nearly identical, except in
2 Michigan AT&T attempted to insert additional issues, an
3 approach rejected by the Michigan panel. It found that
4 the three-year extension did not allow the insertion of
5 these additional issues.

6 And to be clear, this is why Sprint chose
7 the path it did. We could have chosen to arbitrate under
8 Missouri and arbitrate the number of issues that
9 Mr. McPhee and Ms. Flood indicated were still out there.
10 The merger commitments gave us an opportunity outside of
11 the normal 251/252 arbitrations to take what we felt was a
12 more streamlined approach.

13 And I will note that we're almost in May
14 now. Again, the Kentucky agreement expires at the end of
15 this year and by its language would require negotiations
16 to be reopened in June.

17 There's no question that the parties are
18 operating under our current interconnection agreements,
19 and as Judge Dippell noted, you know, AT&T's December 5th
20 correspondence to the election request referred to those
21 as such.

22 Sprint has been trying to obtain
23 interconnection agreements with AT&T since late fall of
24 2007. Admittedly the path has been tortured and
25 contentious. We opened an arbitration window as a direct

1 result of the Commission's dismissal order in our
2 complaint proceeding. We negotiated. We negotiated the
3 interconnection agreement, but eventually we came to
4 realize that the best course of action for us was to
5 extend our agreements. We raised that issue. We
6 negotiated that issue in the arbitration window. We
7 submitted it as an issue in an arbitration, and it was the
8 one issue that Judge Dippell properly ruled on.

9 We respectfully request that the Commission
10 grant the three-year extensions as held in the
11 arbitrator's decision. Thank you.

12 JUDGE DIPPELL: Thank you. Commissioners,
13 do you have questions at this time or do you want to wait
14 and hear AT&T's first? Okay.

15 MR. PFAFF: Thank you.

16 JUDGE DIPPELL: AT&T.

17 MR. BUB: Thank you, your Honor. Good
18 afternoon, Commissioners. My name is Leo Bub, and I
19 represent AT&T Missouri. Thank you very much for inviting
20 us here for oral argument. We know that you have many,
21 many important issues on your plate, and we very much
22 appreciate the time you've given us here today.

23 This morning I'd like to explain AT&T
24 Missouri's view on why the Commission's February 19th
25 Order denying the motion to dismiss and proceeding on to

1 arbitration was erroneous.

2 Before I get into my prepared remarks, I'd
3 like to just go through a couple of things that I noted
4 from Mr. Pfaff's arguments. First, he indicated that this
5 case was much simpler than it appears, and I think I
6 disagree with that because I think you really need to look
7 not just at some very superficial things like whether or
8 not the parties discussed this or that, but you really
9 need to focus on the law here, and the law that controls
10 is the Telecommunications Act of 1996.

11 One thing Mr. Pfaff said that AT&T's trying
12 to dictate the scope of negotiations in arbitration.
13 That's very far from the case. What dictates the scope of
14 negotiations and the scope of arbitration is the Act, and
15 we're just trying to apply the Act.

16 He also mentioned that the Commission here
17 in Missouri had approved an interconnection agreement that
18 we had negotiated with Verizon, and we did have a dispute
19 under the merger commitments. They wanted to -- I believe
20 they wanted to extend one of their agreements. We
21 initially said no. They filed a complaint. On the side,
22 we resolved -- we negotiated, we resolved it, and then we
23 filed a completed arbitrated -- a voluntarily arbitrated
24 agreement with you for approval.

25 That is completely different than

1 entertaining an arbitration here where you're deciding
2 issues of the application of the FCC merger commitment.
3 Completely different thing. So that approval, which is
4 pretty relevant because all you have to do is decide
5 whether it comports with the Act. You don't need to
6 decide particular issues. Didn't even need to touch
7 anything on the merger commitments. That's completely
8 different. So that really doesn't indicate jurisdiction
9 here. What we need to go back to is the touchstone of the
10 Act.

11 Mr. Pfaff also indicated when he gave the
12 chronology of the negotiations between the parties, and at
13 the 11th hour -- all along we had been negotiating the
14 Kentucky interconnection agreement. The parties worked
15 long and hard. Sprint, too. They deserve just as much
16 credit as our folks.

17 They went through, red lined, compared
18 notes, brought engineers, brought different people within
19 the company, subject matter experts to go through that
20 Kentucky agreement to make it suitable for Missouri, and
21 it was a hard negotiation, and there would have been
22 issues that we couldn't resolve that we were going to need
23 to bring here for arbitration.

24 But at the 11th hour, just two weeks before
25 the arbitration window closed, and it was right before the

1 Thanksgiving holidays, they changed course and gave notice
2 to us that they were going to extend their existing
3 interconnection agreements under one of the merger
4 commitments. One of the reasons was that they said it was
5 not likely that we would have changed our position on that
6 merger commitment because we said we didn't think it
7 applied because of our accessible letter.

8 That's true, we didn't think it was
9 going -- that the merger commitment applied, but that's a
10 different question than negotiating. There would have
11 been opportunity had we negotiated to make changes. We
12 didn't -- there were certain things -- this was a very old
13 agreement. If those agreements would have been modified,
14 then it may have been acceptable, but those negotiations
15 never occurred, so those were never brought here.

16 Just to give you -- to put in context, the
17 rush at the end of the arbitration period, of the
18 negotiation period, our final written response to their
19 request to extend, as Mr. Pfaff indicated, was
20 December 5th. That was the same day they filed for
21 arbitration here. So there really wasn't much time at the
22 end to negotiate anything.

23 Mr. Pfaff also made -- spent a great deal
24 of time going through the actual discussions between the
25 parties. And one thing that I need to point out is that

1 whether or not the parties negotiated really isn't
2 relevant. I'm not saying that we didn't talk about it.
3 We did. The conversations were brief. They asked. Our
4 negotiator said they didn't think it applied, and then we
5 formally responded on December 5th.

6 But whether or not -- how you characterize
7 those discussions, whether they're negotiations or not
8 really doesn't matter because what matters here is whether
9 the subject is arbitrable, something that is a requirement
10 of the Act.

11 Let's just say, for example, that during
12 the course of those negotiations they wanted to buy our
13 headquarters building because they liked it and wanted
14 some space in St. Louis and our person said, no, we don't
15 want to sell it. Just because it was talked about in a
16 negotiation and it may have some tangential relationship
17 to telecommunications doesn't mean it's arbitrable under
18 the Act that can be brought here for, in that particular
19 case, for determination of whether or not we have to sell
20 our building and how much it should cost.

21 There's nothing in the Act that would
22 require us to sell any of our property, whether it's a
23 building, a switch or any facilities, and there's -- and
24 there's no jurisdiction for the Commission to make us do
25 it or set a price.

1 Similarly, there's nothing in the Act that
2 says we have to extend our existing interconnection
3 agreements for three years as is with no opportunity to
4 change them, and that's what they're asking here. If you
5 look through the Act, there's nothing that says that. The
6 Act tells us what we have to do, what we have to negotiate
7 and what happens if we can't reach an agreement, and that
8 extension as is with no opportunity to change anything is
9 not part of the Act. That's the -- that's the core of
10 our -- of our jurisdictional issue.

11 Here I'd like get into a little bit more
12 detail than --

13 JUDGE DIPPELL: Mr. Bub, let me have you
14 move the microphone down just a little bit, see if it
15 picks your voice up a little better. I want to make sure
16 that we can hear you well on the recorded version, too, in
17 case some --

18 MR. BUB: Thank you, your Honor. Is this
19 better?

20 JUDGE DIPPELL: That's better. Thank you.

21 MR. BUB: Great. Thank you. I'd like to
22 go to your February 19th Order, and that's the Order
23 denying the motion to dismiss. This Order plainly shows
24 that the Commission believed that AT&T and Sprint were
25 negotiating under Section 252(a) of the '96 Act using the

1 parties' existing Missouri agreement as a starting point
2 for negotiations and then had a disagreement about the
3 term or the life of the agreement that they were
4 negotiating.

5 Now, if you look at -- and this is page 6
6 of your Order under the discussion portion. The
7 Commission reached this conclusion on findings it made
8 based on representations in Sprint's arbitration petition.
9 At page 6 of the Order it says, and this is a quote, AT&T
10 is the first to interject the Missouri interconnection
11 agreements into the negotiations.

12 And on that page of your Order, there's --
13 it points to AT&T's July 16th, 2008 letter, and that's one
14 of the letters in Sprint's exhibits that they brought
15 today. And in that letter we offered to negotiate new
16 agreements using the parties' existing agreements as a
17 starting point for negotiations. And that was one of the
18 requirements under merger commitment 7.3.

19 Sprint had attached that letter to its
20 Petition as Exhibit 4 and then quoted it in paragraph 22
21 of their Arbitration Petition. This offer to negotiate
22 from the -- using the existing agreements as a starting
23 point, that was I think a footnote in our order -- or in
24 our letter.

25 As you know, when parties use an existing

1 agreement as a starting point for negotiations, everything
2 in that agreement is open for negotiation, and the
3 negotiations are bilateral. Either party can seek changes
4 to the old agreement to make it acceptable on a going-
5 forward basis.

6 And if agreement is not reached, either
7 party can under the Act also seek to arbitrate any open
8 issues necessary to fulfill the duties under
9 Section 251(b) and (c). That's what AT&T's July 16, 2008
10 letter offered, one of the things.

11 Now let's go back to the Commission's Order
12 because I want to show you one more thing. At page 6, the
13 Order states that Sprint was merely continuing
14 negotiations that AT&T had earlier suggested. This
15 statement was drawn from paragraph 27 of Sprint's Petition
16 which stated, Sprint's notification of extending its
17 Missouri interconnection agreements essentially takes AT&T
18 up on the offer in its July 16 letter to commence
19 negotiations pursuant to Sprint's existing interconnection
20 agreements.

21 Based on these representations, it's easy
22 to see why the Judge and the Commission believed that the
23 parties engaged in traditional interconnection agreement
24 negotiations using their existing agreement as a starting
25 point. But now it's clear from Sprint's own testimony and

1 post-hearing brief that this is not what happened.

2 Despite what it said in its Arbitration
3 Petition, Sprint's testimony is that it rejected AT&T's
4 July 16 offer to negotiate using the existing agreements
5 as a starting point. Sprint's testimony is that on
6 November 21st, two weeks before the arbitration window
7 closed and right before Thanksgiving, it notified AT&T of
8 its election to extend the parties' existing agreements
9 under merger commitment 7.4.

10 This was not a request to negotiate the
11 terms and conditions of those agreements. It was a demand
12 to extend those agreements as is with no changes
13 permitted. Sprint's witness Mr. Fallon made it clear that
14 there was no intent for bilateral negotiations. This is
15 what he said. He said that Sprint, quote, didn't elect to
16 negotiate an agreement pursuant to merger commitment 7.3.
17 We elected to extend our current agreement pursuant to
18 merger commitment 7.4, and under that merger commitment, I
19 would not agree that AT&T had the right to propose
20 modifications to that agreement. We have the right under
21 merger commitment 7.4 to extend our current
22 interconnection agreement without modification.

23 Sprint reiterated this point in its post-
24 hearing brief, and you can find that on pages 4 through 5.
25 But in order to try to keep their extension demand within

1 your 252(b) arbitration jurisdiction, Sprint claims that
2 merger commitment 7.4 was the standing offer by AT&T that
3 became part of the negotiations, and that Sprint was
4 merely accepting the offer.

5 It in some of its brief indicated that the
6 parties' disagreement over one term or the life of the
7 agreement is an essential term and condition of an
8 interconnection agreement, and by that they mean it's one
9 of the terms and conditions necessary to fulfill the
10 duties under 251(b) and (c) under the Act. They're trying
11 to shoehorn it in to one of the required elements that
12 need to be negotiated.

13 But in making these arguments, Sprint
14 glosses over the critical difference between Section 252
15 negotiations and the terms and conditions -- negotiations
16 of the terms and conditions of interconnection which would
17 give rise to issues subject to arbitration under the Act.
18 They confuse that with a request to extend an existing
19 agreement under merger commitment 7.4 which cannot yield a
20 disagreement subject to arbitration under the Act.

21 That's because merger commitment 7.4 is not
22 part of the Section 252 process which contemplates
23 detailed substantive negotiations between the parties on
24 the requirements set out in 251(b) and (c). Rather,
25 merger commitment 7.4 provides a route to an

1 interconnection agreement that's an alternative to that
2 set out in the Act.

3 A request to extend an interconnection
4 agreement under 7.4, therefore, has nothing whatsoever to
5 do with the negotiation and arbitration process for
6 arriving at an interconnection agreement under 252(b) of
7 the Act. Section 252 only authorizes state commissions to
8 arbitrate the terms and conditions that should be included
9 in an interconnection agreement in order to comply with
10 the requirements of the '96 Act. It doesn't empower the
11 Commission to arbitrate disagreements about what the
12 merger commitments mean.

13 The assertion of jurisdiction here is
14 erroneous because an extension under the merger commitment
15 is not among the duties Section 251 imposes on incumbent
16 LECs, and nothing in the Act contemplates such an
17 extension. Rather, it's an obligation created by the
18 FCC's merger order, and the Commission has already ruled
19 that it didn't have jurisdiction under state or federal
20 law to enforce those merger commitments.

21 Now that all the facts are in, it should be
22 clear that the parties do not have disagreement about the
23 termination date of a replacement contract for which all
24 of the other terms and conditions are agreed. Rather, the
25 parties have a disagreement under the merger commitment

1 about whether Sprint's current agreements are eligible for
2 extension under those agreements, under those commitments.

3 You'll probably hear during the course of
4 this argument that the FCC's merger commitment order is no
5 different than any other FCC order that establishes or
6 clarifies or interpretation -- or interprets
7 interconnected -- interconnection related obligations and
8 that state commissions routinely apply those orders in
9 arbitrations all over the country.

10 We need to tell you that Sprint is dead
11 wrong because there's all the difference in the world.
12 Section 252(d) of the Act directed the FCC to promulgate
13 regulations implementing the requirements of Section 251,
14 and the FCC did so initially in its 1996 willful
15 competition order and then later in subsequent orders.

16 Under Section 252(c), which is what sets
17 out the arbitration standards, those FCC regulations
18 effectively become part of the statute as Section 252
19 states that when a state commission arbitrates, it must
20 ensure that its resolutions of the issues meet the
21 requirements of Section 251, including the regulations
22 prescribed by the FCC pursuant to 251.

23 Thus, the FCC orders that establish or
24 clarify or interpret interconnection related obligations
25 are actually part of what the state commission is required

1 to enforce in an arbitration under 252(b).

2 Let's look at the FCC's merger commitment
3 order. It's in stark contrast. It does not in any way,
4 shape or form implement the Telecommunications Act of
5 1996. Rather, it implements the FCC's duties as a federal
6 agency charged with protecting the public interest with
7 respect to telecommunications mergers.

8 The FCC's responsibility to evaluate and
9 approve telecommunications mergers has nothing to do with
10 the 1996 Act. Indeed, it precedes the 1996 Act by more
11 than 60 years. The FCC's authority to condition its
12 approval of the AT&T/BellSouth merger on the merger
13 commitments, including the merger commitment at issue
14 here, that arises out of Section 214 and Section 303(r) of
15 the 1934 Act.

16 Indeed, the very significance of the merger
17 commitments is that they go above and beyond the
18 requirements of the '96 Act, which I think Sprint would
19 readily admit.

20 Sprint's demand here to arbitrate AT&T
21 Missouri's refusal to extend the existing agreements under
22 the FCC's merger commitments is nothing more than an end
23 run around your prior Order holding that enforcement of
24 the merger commitments is beyond the Commission's
25 jurisdiction.

1 As an issue that Sprint seeks to arbitrate
2 is not a 252(b) issue, we believe the Commission must
3 reconsider and dismiss this proceeding. And that
4 concludes my remarks.

5 JUDGE DIPPELL: Thank you, Mr. Bub.

6 MR. BUB: Thank you.

7 JUDGE DIPPELL: Are there any Commissioner
8 questions for Mr. Bub or shall I have him sit down and you
9 can ask your questions to -- Commissioner Jarrett?

10 COMMISSIONER JARRETT: I have a -- thank
11 you, Judge. Mr. Bub, while you're standing there, I had a
12 couple of questions.

13 Did Sprint raise the issue of the
14 three-year extension during the negotiation window?

15 MR. BUB: Yes, they did, your Honor. They
16 raised it about two weeks before the window closed. It
17 was in the context of a discussion of a negotiation
18 session of the Kentucky agreement, and as an aside, their
19 negotiator asked ours or indicated that they were
20 interested in extending their existing agreements under
21 merger commitment 7.4.

22 And then she indicated that she didn't
23 think that was -- that that could be done under our
24 company's policy. I think there may have been one more
25 discussion after that, but then we did send a formal

1 letter on December 5th, and that was -- that was I think
2 the day their arbitration window, maybe the last day,
3 because that was the day they filed their Arbitration
4 Petition.

5 COMMISSIONER JARRETT: Now, does AT&T agree
6 or disagree that under federal law Sprint has the right to
7 receive the three-year extension?

8 MR. BUB: That is one of our merger
9 commitments. I think the question is whether the merger
10 commitment applies here. Our view is it doesn't. But in
11 other cases when -- I think it's more of a timeliness
12 issue. If they had asked earlier, then the extension, we
13 would have agreed to it, but there -- you're correct,
14 there is a merger commitment that says. It's in their
15 attachment.

16 COMMISSIONER JARRETT: I'm specifically
17 looking at this Michigan case. I don't know if you have a
18 copy of that.

19 MR. BUB: I do. I do.

20 COMMISSIONER JARRETT: The arbitration.
21 They even put up a little chart dealing with that, I think
22 on page 13. They put up there what AT&T says and what
23 merger commitment 7.4 says. And the merger commitment
24 says that AT&T/BellSouth ILECs shall permit a requesting
25 telecommunications carrier to extend its current

1 interconnection agreement regardless of whether its
2 initial term has expired for a period of up to three
3 years. And then AT&T says merger commitment 7.4 only
4 permits a requesting telecommunications carrier to extend
5 an agreement for up to 36 months from the expiration date
6 of the initial term of the agreement, whether or not that
7 initial term has expired.

8 Is AT&T's position still that that's what
9 the merger commitment says?

10 MR. BUB: I think our position is that's
11 what it means. I honestly do not know where the language
12 came from in the first box, but I do agree that our view
13 of the language in the second box is that carriers'
14 current interconnection agreements can be extended for
15 three years, which I guess is 36 months, regardless of
16 whether it's expired.

17 So if an agreement expired, say, in 2000,
18 adding three years to that agreement would only have --
19 would already be -- would still be expired. So that's how
20 we interpret that merger commitment language in 7.4.

21 COMMISSIONER JARRETT: Okay. Now I'm
22 confused. In the answer to my prior question, you agreed
23 that under federal law they had -- Sprint had the right to
24 a three-year extension of the current agreement.

25 MR. BUB: I agree that 7.4 imposed an

1 obligation on us to extend current interconnection
2 agreements regardless, you know, whatever the exact
3 language is, that there is that obligation on us.

4 COMMISSIONER JARRETT: And then you said
5 something like -- and I don't want to put words in your
6 mouth. You said something like you would have agreed to
7 that, but it was a timeliness issue.

8 MR. BUB: Yes.

9 COMMISSIONER JARRETT: So what's the
10 timeliness issue? Because what -- merger commitment 7.4
11 doesn't seem to have a time limit. It says regardless of
12 whether it's expired.

13 MR. BUB: Let me take this in two parts.
14 On the plain language as is, we read that to say that no
15 matter when it expires, a carrier can add three years to
16 it. I think that's probably the simplest form. So if an
17 agreement expired this year in 2009, then they would get
18 'til three years from then, 2012. If the agreement
19 expires in the year 2000, adding three years to that, it
20 would still be expired, because even with the three-year
21 extension, it would expire in 2003.

22 Two of the Sprint agreements, I believe the
23 Nextel and the Sprint Spectrum agreements, they would fall
24 under that category, because even if you were to add three
25 years to those existing agreements' terms, they would

1 still be expired. So that's the timeliness issue with
2 respect to those.

3 The second category of interconnection
4 agreements is where their CLEC agreement falls. Under
5 their CLEC agreements, you heard Mr. Pfaff say that under
6 that agreement, if you were to add three years to it,
7 there would still be some life, and I agree with that.

8 Here is one of those instances where things
9 were a little bit more complicated than they seem on their
10 face. When we initially began applying this merger
11 commitment as we read it, adding three years to the end of
12 the agreement and it is what you got, we ran into a lot of
13 issues with Sprint and other carriers who said, look,
14 we're not going to get any benefit under this merger
15 commitment because our agreements are so old. If you add
16 three years to them, they're still going to be expired and
17 we get no benefit.

18 I think there have even been -- I know
19 there was a complaint here. Verizon filed a complaint
20 here. Other carriers filed complaints other places.

21 And after looking at all those, we just
22 wanted to get the whole thing behind us. We issued an
23 accessible letter saying, okay, we'll take all these
24 expired agreements, but we're going to establish a date.
25 I believe the date was January 15th, 2008. If you give us

1 a request to extend even those old agreements, no matter
2 how old, we will extend them for three more years.

3 And we had hoped, had expected that that
4 accessible letter would resolve all these issues, and
5 although I think there were six, seven, eight Sprint
6 agreements that got resolved in that manner, along with a
7 whole host of others, there were in all about 600 that
8 were filed pursuant to that extended grace period under
9 our accessible letter, we accepted them, we extended them,
10 we filed them, and away we went. We thought that was the
11 end of it.

12 Later when Sprint started seeking to port
13 the Kentucky interconnection agreement, we complied with
14 that. We negotiated for that port. And here when they
15 decided to change positions and seek an extension instead
16 of a port to the Kentucky agreement, it was way past the
17 deadline that we had established in our accessible letter,
18 way past January 15th, 2008. So we denied that request.
19 I think that's the -- our December 5th, 2009 letter.

20 So that's the timeliness issue with respect
21 to the CLEC agreements. This is a little bit unusual
22 because here there were three agreements. Usually we
23 negotiate them one at a time. Here there were three that
24 were addressed.

25 COMMISSIONER JARRETT: Obviously we have

1 this Michigan case, and you're arbitrating this issue,
2 similar issue here in Missouri. Are there other states
3 where Sprint and AT&T are negotiating or arbitrating this
4 issue or have arbitrated this issue?

5 MR. BUB: Yes, there are, your Honor, and
6 I'll have to look at my notes to give you the specific
7 references.

8 COMMISSIONER JARRETT: Are those ongoing or
9 have decisions been issued in those cases?

10 MR. BUB: I think there are some decisions.

11 MR. PFAFF: If I may? The issue of the
12 three-year extension has not been resolved by any other
13 state commission.

14 JUDGE DIPPELL: Mr. Pfaff, if you'll speak
15 into the microphone, we can be sure and pick it up.

16 MR. PFAFF: I'm sorry. As Mr. Bub said,
17 this issue has not actually been presented to a state
18 commission in another state yet. Sprint has requested a
19 three-year extension in other states with AT&T. Now,
20 Michigan and Missouri just happened to be the first two
21 states.

22 The -- just as you know, Sprint had
23 submitted its request to port its Kentucky ICA to other
24 states, and that issue has been adjudicated. Is that
25 helpful? Is that responsive?

1 COMMISSIONER JARRETT: Yes. And I
2 appreciate that. Counsel, could you provide me with a
3 list of the states, case numbers, that type of thing where
4 this is an ongoing issue?

5 MR. BUB: Yes. One thing that we did
6 present in Michigan, that we raised in Michigan, the same
7 thing that we're raising here, is the jurisdictional
8 question. And one thing that I'd like to call your
9 attention is on page 6, the arbitration panel acknowledged
10 that we had raised a motion to dismiss but said that
11 the -- that the commission was the appropriate body to
12 rule on that, so that they made no formal recommendation
13 regarding AT&T's motion to dismiss and leaves
14 consideration of that motion to the Commissioners.

15 So we made the same motion here. I don't
16 believe that that's been formally ruled upon by the
17 Michigan Commission. So this is still in a -- I don't
18 know if it would be called a proposed panel decision, but
19 it still needs to be -- still needs to go to the
20 commission before it's a final order. Would that be
21 accurate characterization?

22 MR. SCHIFMAN: It is a decision of the
23 arbitration panel, although what Mr. Bub said, the
24 commission -- the panel said the commission needs to rule
25 on the motion to dismiss, the panel said on page 9 that it

1 feels confident that this matter is properly before the
2 commission as apparent from the quote above and a previous
3 complaint case. Similar to what happened in Missouri, in
4 Michigan, the -- Sprint had filed a complaint attempting
5 to port the Kentucky ICA. The Michigan Commission said,
6 no, you need to bring it to us in an arbitration, similar
7 to what the Commission did here, and Sprint in Michigan,
8 just as it did in Missouri, filed an arbitration petition.

9 And so that's what the Commission -- that's
10 what the arbitration panel is recognizing, that the
11 commission in Michigan said, hey, Sprint, bring us these
12 issues in the form of an arbitration, and that's what
13 Sprint did, both in Missouri and in Michigan.

14 And as you can see from what the panel
15 said, they feel it's -- they're quite confident that that
16 matter is properly before the Commission.

17 JUDGE DIPPELL: Can I jump in there just
18 one moment? So the arbitrator's -- this is in a similar
19 situation from this proceeding here in Missouri?

20 MR. SCHIFMAN: Exactly. I mean, we're at
21 the same procedural standpoint. We have an arbitration
22 report in Missouri. You have an arbitrator's report or
23 panel decision in Michigan.

24 The only -- I guess the only difference is
25 that here the Commission actually ruled on AT&T's motion

1 to dismiss and said, no, you cannot dismiss it. Michigan
2 has not -- the Michigan Commission has not formally ruled
3 on AT&T's motion to dismiss there.

4 JUDGE DIPPELL: Before the Michigan
5 proceeding is final, will the Michigan Commission have to
6 rule on the arbitrator's report --

7 MR. SCHIFMAN: Yes.

8 JUDGE DIPPELL: -- like here in Missouri?

9 MR. SCHIFMAN: Yes. So the Michigan
10 Commission will either accept in whole or in part or
11 reject the arbitrator's report from Michigan.

12 MR. BUB: And it would be fair to
13 characterize the motion to dismiss on the jurisdictional
14 issue as properly pending before the Michigan Commission;
15 wouldn't that be correct?

16 MR. SCHIFMAN: Yes. I mean, I think the
17 panel gave what its recommendation is on that issue.

18 COMMISSIONER JARRETT: And I just have one
19 more question, Mr. Bub, if you would.

20 MR. BUB: Sure.

21 COMMISSIONER JARRETT: Your argument is
22 that we don't have the jurisdiction --

23 MR. BUB: Yes.

24 COMMISSIONER JARRETT: -- to enforce the
25 terms of the merger agreement?

1 MR. BUB: And that's what your prior order
2 on the Kentucky port complaint said.

3 COMMISSIONER JARRETT: And my question is,
4 then who does?

5 MR. BUB: The FCC. The FCC.

6 COMMISSIONER JARRETT: So it's AT&T's
7 position that Sprint should go to the FCC to seek --

8 MR. BUB: Absolutely. Yes, your Honor.

9 COMMISSIONER JARRETT: -- to seek
10 enforcement of the three-year extension?

11 MR. BUB: The FCC's order. And then the
12 FCC's order itself said that we reserve jurisdiction to --
13 if anybody's not complying, that we reserve enforcement
14 jurisdiction.

15 COMMISSIONER JARRETT: Sprint, any --
16 Mr. Pfaff, Mr. Schiffman, do you want to respond to that?

17 MR. SCHIFMAN: Thank you, Commissioner
18 Jarrett. I'll start, and Mr. Pfaff may want to add
19 something.

20 Our position is that the Commission here
21 has the authority over it. There's a couple of points
22 that we bring out is if you look at those merger
23 commitments regarding the interconnection agreement
24 commitments, so that's merger commitment 7.1 through 7.4,
25 it starts on page 149. It says, reducing transaction

1 costs associated with interconnection agreements.

2 These all relate to Section 251/252
3 interconnection agreements. These are not related to some
4 other agreements that only get filed at the FCC. These
5 are agreements that get filed and approved and arbitrated
6 here at state commissions around the country.

7 And the reason as Commission -- or as Judge
8 Dippell cited in her arbitrator's report, there's a
9 footnote on page 43 of the arbitrator's report where Judge
10 Dippell cited a statement by Commissioner Adelstein from
11 the FCC that basically talked about reducing transaction
12 costs and the point of these merger commitments, the ones
13 that we're talking about here, is to let requesting and
14 competitive carriers be able to reduce their transaction
15 costs in obtaining interconnection agreements.

16 And basically, you know, with all due
17 respect to AT&T, what they are saying here is that if they
18 don't agree to your jurisdiction, then you don't have it.
19 And our point is, we opened up a negotiation window. We
20 entered into negotiations. There were letters exchanged
21 regarding this very -- Sprint using this very merger
22 commitment. It was all according to the time frames
23 associated with the Act.

24 The Commission told us to bring before them
25 any -- instead of in a complaint form, bring it before

1 them in an arbitration case, and that's what we did. And
2 so we believe that you guys, the Commission has ample
3 jurisdiction. The merger commitments at the beginning say
4 that nothing in these merger commitments takes away any
5 jurisdiction that states have.

6 So whatever -- and the Michigan panel
7 recognized that. The Michigan panel said, hey, we
8 regularly interpret FCC orders. That's what commissions
9 do when they're dealing with interconnection agreements.
10 This merger order is another FCC order that we're
11 interpreting in the context of a Section 251/252
12 arbitration.

13 So the Commission has ample jurisdiction
14 because the merger commitments did not take away any of
15 your jurisdiction, and we raise this under a standard
16 Section 251/252 arbitration. Do you have anything to add?

17 MR. PFAFF: No. I mean, the only thing I
18 will also add is that almost every other state when
19 confronted with a proceeding or an action to enforce
20 merger commitments has found that it has jurisdiction,
21 although some states like Michigan, Missouri and Texas
22 didn't care for the mechanism that Sprint's brought.
23 Okay.

24 But many other states like -- for example,
25 I'll just go through a quick list that have ruled that

1 they do have jurisdiction over merger commitments.
2 California, Connecticut, Illinois, Indiana, Kansas. You
3 know, Michigan has a panel decision. Ohio, Oklahoma,
4 Wisconsin. All those states have ruled that they have the
5 appropriate authority over merger commitments because, as
6 Ken said, they relate to interconnection agreements and
7 interconnection agreements are the province of the states.
8 Thank you.

9 MR. BUB: Your Honor, I think I've already
10 addressed that that's just a gross overstatement of the
11 law. There's nothing in the Act that says a requesting
12 carrier can extend an existing agreement as is with no
13 negotiations. There's nothing in the Act that says it.
14 That comes from the merger commitment. That's what I was
15 trying to get at before.

16 It's in the merger commitment, and right on
17 the first page of Appendix F, third paragraph down, the
18 FCC itself says, for the avoidance of doubt, unless
19 otherwise expressly stated to the contrary, all conditions
20 and commitments proposed in this letter are enforceable by
21 the FCC and would apply in the AT&T/BellSouth region
22 territory as defined herein for a period of 42 months from
23 the merger closing date and would automatically sunset
24 thereafter.

25 It's clear that this is an FCC merger

1 commitment retirement. It was their order and they're
2 enforcing it. So if they're -- if there's a complaint to
3 be filed, it's to be filed at the FCC.

4 Now, that said, if Sprint had asked to
5 negotiate using the existing agreements as a starting
6 point, like they said in their petition, we negotiated
7 where there was a bilateral give and take and then brought
8 to you the unresolved issues, that would be a 252
9 arbitration and you would have full jurisdiction over
10 that.

11 And to be real honest, if you want to get
12 rid of this jurisdictional question, all you need to do is
13 to dismiss this or instruct the parties to go back and
14 negotiate that type of an agreement, then you would
15 entertain it. We would have a handful of issues of things
16 that we don't like about the current agreements. If we
17 can't resolve them, one of us will bring them to you, you
18 can be assured of that.

19 But, you know, this is not a situation
20 where we're putting Sprint into the lurch because all
21 throughout this proceeding back when we were negotiating
22 over the Kentucky agreement, during this arbitration
23 proceeding now, what are we operating under? The existing
24 terms and conditions that -- from the old agreements.

25 If you were to dismiss this on the basis of

1 no jurisdiction over merger commitment 7.4, we'd still be
2 operating under the same conditions, under those old
3 interconnection agreements. We will at some point or they
4 will at some point ask for those to be renegotiated.
5 We'll do it, and if there's anything that we can't resolve
6 at the bargaining table, we'll come back here. But for
7 that whole time we're going to be operating under the
8 existing agreement. So there really isn't much harm.

9 MR. SCHIFMAN: Commissioners and Judge
10 Dippell, I'd like to address this real quickly. And I
11 think the best way to do it, I don't think I can say it
12 any better than the panel did in Michigan. If you look at
13 footnote 3 on page 11 of that panel decision, that's
14 exactly what AT&T attempted to do, what Mr. Bub is
15 suggesting that they be allowed to do here.

16 AT&T in Michigan actually interjected a
17 number of issues as to what it wanted to change about
18 Sprint's current interconnection agreements in Michigan,
19 and the panel there said, however, as the merger order
20 specifically states, the extensions are only subject to
21 modification to reflect changes in law. No other
22 amendment is required or for that matter permitted without
23 agreement of the parties. The panel believes that if the
24 ICAs were subject to a wide range of amendments, the
25 three-year extension provision would be unlawfully

1 rendered a nullity.

2 So what happened there is that -- here in
3 Missouri, AT&T chose to file a motion to dismiss. It did
4 not choose to introduce any proposed changes into this
5 process. In Michigan, they filed a motion to dismiss, but
6 they also proposed a bunch of changes to the
7 interconnection agreements. That's exactly what Mr. Bub
8 is saying that -- what AT&T wants to do now.

9 And I would respectfully submit that the
10 Commission here should follow what the panel stated in
11 Michigan, which is, if you allow them to do that, you're
12 rendering this merger commitment a nullity. It means
13 nothing, because the only thing that the merger commitment
14 says is that changes are available for is for changes in
15 law. And the panel there found that there were no changes
16 in law that forced any of the amendments that AT&T
17 suggested in Michigan.

18 MR. BUB: Your Honor, that paragraph that
19 he read from from the Michigan order demonstrates exactly
20 why this is not a 252 arb -- negotiation and arbitration.
21 Without the ability to have bilateral negotiations where
22 parties can both bring their issues, it's not a 252
23 negotiation or arbitration, and that's why there's no
24 jurisdiction here, and that's why that order is erroneous.

25 We haven't filed our comments yet, I

1 believe, but you can be sure that we will. We'll point
2 that out to the Michigan Commission, and then they can
3 consider it when they consider our motion to dismiss.

4 COMMISSIONER JARRETT: Thank you, counsel.
5 I think I understand both sides' arguments on that. I
6 appreciate your indulgence in answering my questions.
7 Thank you for the arguments. I have no further questions,
8 Judge.

9 JUDGE DIPPELL: Thank you. Mr. Chairman?

10 CHAIRMAN CLAYTON: Thank you, Judge. I
11 don't have any questions, but I do want to thank the
12 parties for coming in here today.

13 MR. BUB: We really appreciate the time
14 you've given us. Thank you. Because we know you have a
15 lot going on.

16 JUDGE DIPPELL: Would you-all like to make
17 any closing remarks? Mr. Schiffman or Mr. Pfaff?

18 MR. BUB: Your Honor, I don't.

19 MR. PFAFF: I don't have any closing
20 remarks. Thank you.

21 JUDGE DIPPELL: All right. Thank you.
22 Well, with that, then, I also appreciate you all being
23 willing to schedule this on short notice. With the
24 limited time that we have in these arbitration
25 proceedings, that that was very helpful. And all of the

1 Commissioners will be reviewing the transcript or the
2 video of this hearing, even though not everyone could be
3 here today because of scheduling issues. I've asked the
4 court reporter to expedite the transcript. I hope she got
5 that information. I'll make sure she does.

6 So I appreciate everyone being here, and
7 this concludes the oral arguments. We can go off the
8 record. Thank you.

9 WHEREUPON, the oral argument in this case
10 was concluded.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, do hereby certify that I was personally present
8 at the proceedings had in the above-entitled cause at the
9 time and place set forth in the caption sheet thereof;
10 that I then and there took down in Stenotype the
11 proceedings had; and that the foregoing is a full, true
12 and correct transcript of such Stenotype notes so made at
13 such time and place.

14 Given at my office in the City of
15 Jefferson, County of Cole, State of Missouri.

16 _____
17 Kellene K. Feddersen, RPR, CSR, CCR
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